

DEC 13 2007

FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: AR 07-07

DATE REFERRED: September 27, 2007

DATE ACTIVATED: October 23, 2007

EXPIRATION OF SOL: June 8, 2010

SOURCE:

AUDIT REFERRAL

RESPONDENTS:

**Cynthia McKinney for Congress and
Joan Christian, in her official capacity as treasurer**

**RELEVANT STATUTE
AND REGULATION:**

**2 U.S.C. § 434(b)
2 U.S.C. § 441a(f)
11 C.F.R. § 110.1(b)
11 C.F.R. § 110.1(l)
11 C.F.R. § 110.1(k)**

INTERNAL REPORTS CHECKED:

**Audit Documents
Disclosure Reports**

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter was initially generated by a Commission audit pursuant to 2 U.S.C. § 438(b) of Cynthia McKinney for Congress ("the Committee") covering the period January 1, 2005 through December 31, 2006. The Commission approved the Final Audit Report ("FAR") for the Committee on September 19, 2007 and on September 27, 2007 two findings from the FAR were referred to this office. Based on the information set forth in the FAR, we recommend that the Commission make reason to believe findings as follows:

- 1 • The Committee violated 2 U.S.C. § 441a(f) by accepting contributions that exceed the
- 2 limits in 2 U.S.C. § 441a(a). *See* Attachment 1 at 3.
- 3 • The Committee violated 2 U.S.C. § 434(b) by failing to properly disclose opening and
- 4 ending cash balances, receipts and disbursements. *See* Attachment 1 at 5.

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15 **III. RECOMMENDATIONS**

16 1. Open a MUR in AR 07-07;

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18 2. Find reason to believe that Cynthia McKinney for Congress and Joan Christian, in her
19 official capacity as treasurer, violated 2 U.S.C. § 441a(f);

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3. Find reason to believe that Cynthia McKinney for Congress and Joan Christian, in her official capacity as treasurer, violated 2 U.S.C. § 434(b);

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5. Approve the Final Audit Report of Cynthia McKinney for Congress, approved by the Commission on September 19, 2007, as the Factual and Legal Analysis;

6. Approve the appropriate letters.

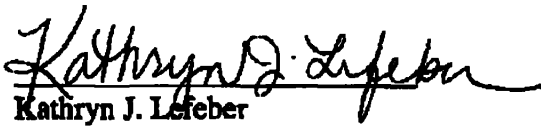
Thomasenia P. Duncan
General Counsel

12/13/07
Date

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement


Susan L. Lebeaux
Assistant General Counsel


Kathryn J. Lefebvre
Attorney

Attachments:

1. Final Audit Report of Cynthia McKinney for Congress

Referral Matters

Finding 1. Receipt of Contributions that Exceed Limits

Summary

CMFC accepted 14 contributions from individuals and political committees that exceeded the limit by \$21,300. Of these excessive contributions, \$11,100 was eligible for presumptive redesignation and/or reattribution. The remaining excessive contributions, \$10,200, exceeded the limit per election and could not be resolved through redesignation and/or reattribution. In response to the interim audit report, CMFC provided evidence that redesignation and/or reattribution notices were sent. The response demonstrated that \$500 was not excessive. In addition, CMFC responded that the remaining contributions totaling \$9,700 were not excessive, however, CMFC provided no evidence supporting this assertion.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,100 per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into its federal account and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the committee's primary net debt position.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- how the contribution was attributed; and
- the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

E. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee must either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

Facts and Analysis

The Audit staff reviewed all contributions from individuals and political committees to determine if excessive contributions were received. The Audit staff identified 11 contributions from individuals and 3 contributions from political committees that exceeded the limit by \$14,400 and \$6,900, respectively. During this review, it was noted that CMFC routinely redesignated contributions to another election or reattributed contributions to another account holder. However, no documentation was provided by CMFC in support of these redesignations and reattributions; neither signed redesignations or reattributions, nor the contributor notifications required to take advantage of the presumptive reattribution or redesignation options discussed above.

Of the excessive contributions, \$11,100 is eligible for presumptive redesignations and/or reattributions. The remaining excessive contributions, \$10,200, could not be resolved through redesignation and/or reattribution based upon available documentation.

At the exit conference, the Audit staff discussed this issue with CMFC's treasurer and legal counsel and subsequently provided them with schedules detailing these discrepancies. They

agreed to review these schedules to determine whether they concurred with the exceptions listed and respond accordingly.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CMFC:

- Send notices to those contributors whose contributions were eligible for presumptive redesignation and/or reattribution (\$11,100) informing them how their contribution was designated and/or attributed and offer a refund of the excessive portion. Absent a request for a refund by the contributors, these notices would have obviated the need for contribution refunds or payments to the U.S. Treasury. For notices sent to contributors, CMFC should have provided a copy of each notice and evidence that it was sent. These notices must demonstrate that both the contributor and the individual to whom the contribution was reattributed were notified. If any contributor could not be located or if the presumptive notice came back undeliverable, a disgorgement of the excessive contribution should have been made to the U.S. Treasury with evidence of such action; and
- Provide evidence demonstrating that the remaining contributions, totaling \$10,200, were not excessive. Such evidence should have included, but not be limited to, documentation that the contributions were reattributed, redesignated, or refunded in a timely manner; or
- Absent such evidence, refund \$10,200 to the contributors or make a disgorgement to the U.S. Treasury and provide evidence of such action (copies of the front and back of negotiated refund checks); or
- If funds were not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds became available to make such refunds.

In response to the interim audit report recommendations, CMFC provided evidence that notices were sent to contributors that were eligible for presumptive redesignation and/or reattribution. The response demonstrated that \$500 was not excessive. For the remaining contributions totaling \$9,700, CMFC indicated that these contributions were not excessive, however, CMFC provided no evidence supporting this assertion.

Finding 2. Misstatement of Financial Activity

Summary

A comparison of CMFC's reported figures to its bank records revealed that cash-on-hand, receipts and disbursements had been misstated for calendar years 2005 and 2006. In response to the interim audit report, CMFC amended its 2006 reports. However, the amendments did not materially correct the misstatement for 2006. In addition, no amendments were filed for the 2005 misstatement.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and

- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4), and (5).

Facts and Analysis

The Audit staff reconciled reported financial activity to bank records for calendar years 2005 and 2006. The following charts outline the discrepancies for the beginning cash balance, receipts, disbursements and the ending cash balance for each year. Succeeding paragraphs address the reasons for the misstatements.

2005 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance	\$11,352	\$1,996	\$9,356 Overstated
Receipts	\$147,522	\$158,425	\$10,903 Understated
Disbursements	\$123,118	\$131,575	\$8,457 Understated
Ending Cash Balance	\$35,756	\$28,846	\$6,910 Overstated

The \$9,356 overstatement of the beginning cash balance on January 1, 2005, could not be explained but most likely occurred due to prior period errors.

The net understatement of receipts resulted from the following:

• Unreported contributions from individuals and political committees	\$ 13,193
• Reported contributions from individuals not supported by deposit	(2,280)
• Unexplained difference.	<u>(10)</u>
Net understatement of receipts	<u>\$ 10,903</u>

The net understatement of disbursements resulted from the following:

• Unreported disbursements	\$ 8,703
• Two disbursements reported incorrectly	<u>(246)</u>
Net understatement of disbursements	<u>\$ 8,457</u>

The \$6,910 overstatement of ending cash on hand resulted from the unexplained beginning cash difference as well as the receipt and disbursement misstatements noted above.

2006 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance	\$35,756	\$28,846	\$6,910 Overstated
Receipts	\$218,251	\$308,807	\$90,556 Understated
Disbursements	\$193,165	\$366,056	\$172,891 Understated
Ending Cash Balance	\$60,842	\$(28,403)	89,245 Overstated

The net understatement of receipts resulted from the following:

• Unreported contributions from individuals	\$ 96,489
• Reported contributions from individuals and political committees not supported by deposit	(5,708)
• Unexplained difference	<u>(225)</u>
Net understatement of receipts	<u>\$ 90,556</u>

The understatement of disbursements resulted from the following:

• Unreported operating expenditures	\$ 92,259
• Unreported disbursements to poll workers	80,630
• Unexplained difference	<u>2</u>
Understatement of disbursements	<u>\$ 172,891</u>

At the exit conference, the Audit staff explained the misstatements and subsequently provided CMFC's treasurer and legal counsel with schedules detailing these discrepancies. They agreed to review the spreadsheets provided and expressed a willingness to file amended reports.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CMFC amend its reports to correct the misstatements noted above and amend its most recently filed report to correct the cash on hand balance.

In response to the interim audit report, CMFC amended the 2006 reports. However, the amendments did not materially correct the misstatement for 2006. In addition, no amendments for the 2005 misstatement were filed.